

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ROBERT DARRELL GREENLEE	§	
v.	§	CIVIL ACTION NO. 6:06cv14
JOE MURPHY, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Robert Greenlee, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Greenlee sued an assistant Smith County district attorney, the state district judge who presided over his trial, and two deputy sheriffs, whom he said committed perjury during his trial. After review of the pleadings, the Magistrate Judge recommended that the lawsuit be dismissed. The Magistrate Judge noted that to the extent that Greenlee asked that the charges against him be dismissed, the claim must be brought in habeas corpus rather than through a vehicle of a Section 1983 lawsuit. The Magistrate Judge further said that Greenlee cannot ask that perjury charges be instituted against the deputies because there is no constitutional right to have other persons criminally prosecuted.

Finally, the Magistrate Judge said that Greenlee's request that disciplinary action be instituted against the assistant district attorney and that "an investigation be conducted" into the practices of the 241st Judicial District Court were without merit because the federal district court cannot institute disciplinary proceedings against state district attorneys for their conduct in state court

trials, and the federal district court also lacks supervisory power over the state courts. Because none of Greenlee's claims entitle him to relief under Section 1983, the Magistrate Judge recommended that the lawsuit be dismissed as frivolous.

Greenlee received a copy of the Magistrate Judge's Report on July 12, 2006, but has filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Reports of the Magistrate Judge are correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED as frivolous with prejudice as to its refiling as a Section 1983 lawsuit against these parties. It is further

ORDERED that the dismissal of this lawsuit shall not prevent Greenlee from seeking relief through any other legal means, including but not limited to challenging his confinement through state and federal habeas corpus procedures. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 17th day of August, 2006.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE